

**N.D.A.G. Letter to Diemert (Feb. 17, 1988)**

February 17, 1988

Mr. Daniel G. Diemert  
Diemert Law Office, P.C.  
59 First Avenue South  
P.O. Box 39  
Ellendale, ND 58436-0039

Dear Mr. Diemert:

Thank you for your letter of February 2, 1988, inquiring as to whether a particular city employee is an officer appointed by the mayor and may be removed only pursuant to N.D.C.C. § 40-08-19.

In council cities, the mayor, with the approval of the city council, appoints several officers including a city auditor, assessor, attorney, engineer, and "such other officers as the city council deems necessary and expedient." N.D.C.C. § 40-14-04. Such persons appointed by the mayor may be removed by the mayor when he is of the opinion that the interests of the city demand such removal. However, the mayor must report the reasons for the removal to the council at its next regular meeting. N.D.C.C. § 40-08-19.

Your question is whether a particular employee falls within the list of mayor-appointed officials in N.D.C.C. § 40-14-04. If he does, he may only be removed by the mayor pursuant to N.D.C.C. § 40-08-19. If he does not, the city council is free to take action with respect to his continued employment with the city.

We are unable to determine whether the individual in question falls within the category of city officers listed at N.D.C.C. § 40-14-04. Instead, the city council needs to determine whether this particular officer is "necessary and expedient."

The statute clearly suggests that this is a factual determination to be made by the city council, rather than a question of law which the office is authorized to answer.

I am sorry I could not have been of more assistance to you.

Sincerely,

Nicholas J. Spaeth

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